

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2015

Date of Reserving the Order	Date of Pronouncing the Order
08.12.2015	11.12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.900 of 2015

D.Balaraman

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep., by the Secretary to Govt.,
Housing and Urban Development Dept.,
Fort St., George,
Chennai - 600 009.
- 2.The Special Thasildar (Land Acquisition),
Tamil Nadu Housing Board Schemes,
Nandanam,
Chennai - 600 035.
- 3.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai - 600 035.
- 4.The Executive Engineer,
TNHB Beasant Nagar,
Chennai - 600 041.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Declaration to declare that the entire land acquisition proceedings initiated under the Land Acquisition Act, 1894 in respect of the lands to an extent of 18 cents in Survey No.98/5 of Thiruvanniyur Village duly notified by the second respondent in the Award under reference No.7/86 (RC.No.414/79), dated 23.09.1986 as lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) and pass such further.

For Petitioner .. Mr.M.Dhandapandi

For Respondents .. Mr.R.Lakshminarayanan AGP for R1

Mr.B.Vivekavanan for RR2 to 4

O R D E R

The petitioner seeks for issuance of a Writ of Declaration to declare that the entire land acquisition proceedings initiated under the provisions of the Land Acquisition Act, 1894, (Act) in respect of the land measuring an extent of 18 cents in Survey No.98/5 of Thiruvanniyur village covered under the award passed by the second respondent, dated 23.09.1986 in award No.7/86, as having been lapsed in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

2. The petitioner one D.Balamurugan, son of Duraisamy claims that his father became entitled to the property in question by virtue of a settlement deed dated 06.03.1935, executed by the petitioner's grandfather and after the demise of the petitioner's father, it is stated that the property has devolved upon the petitioner and other legal heirs.

3. Before going into the factual details regarding the acquisition proceedings, it is relevant to note that the present Writ Petition challenging the acquisition proceedings is only on two grounds in the light of Section 24(2) of the Central Act 30 of 2013, that physical possession of the land has not been taken over from the petitioner and compensation has not been paid and therefore, the land acquisition proceedings are deemed to have been lapsed.

4. The undisputed factual position is that notification under Section 4(1) of the Act was issued on 17.07.1978 and the lands comprised in survey No.98/5, which is subject matter in this Writ Petition was shown to be belonging to one Singaram, who is stated to be the petitioner's paternal uncle (father's brother). The declaration under Section 6 of the Act was issued on 06.08.1981, in which it is shown that the lands in survey No.98/5 belongs to Singaram son of Chinnamuniyan, Balaraman and Ramachandiran sons of Duraisamy. The award was passed on 23.09.1986, in Award No.7 of 1986 and the compensation payable with regard to the subject property is mentioned in item No.17 of the award.

5. The petitioner had filed a Writ Petition before this Court in W.P.No.15541 of 2003, praying for issuance of a Writ of Mandamus to forbear the respondents from acquiring the lands of

the petitioner in survey No.98/5. At the time when the said Writ Petition was entertained, this Court took note of the submissions made on behalf of the petitioner that the acquisition proceedings in respect of the adjacent lands were quashed by this Court and therefore, an order of interim injunction was granted initially for a limited period and subsequently, made absolute by order dated 13.08.2003. During the pendency of the said Writ Petition, the petitioner filed another Writ Petition in W.P.No.21533 of 2004, to direct the respondents to consider his representation pursuant to G.O.Ms.No.254, dated 06.10.2003, by which certain lands were excluded from the acquisition proceedings. The said Writ Petition along with the another connected matter were disposed of by common order dated 19.08.2004, to consider the said representation on merits. It appears that the petitioner did not follow up the matter thereafter. While so, W.P.No.15541 of 2003, was heard by this Court finally on 06.03.2013 and the Writ Petition was dismissed as infructuous with an observation that if the petitioner wishes to pursue his claim in terms of the Government order, he is at liberty to file appropriate application before the appropriate forum as per the procedure known to law. Thereafter, the petitioner submitted a representation on 01.04.2013, contending that he belongs to Harijan community, his land ought not to have been acquired. This request was rejected by the Tamil Nadu Housing Board by letter dated 27.06.2013, stating that the Government Order regarding the acquisition of lands belong to Harijans was issued during 1995, that is after the date of Section 4(1) notification (i.e.,) 17.07.1978. It was further stated that the said Government Order clearly states that unless it is unavailable the lands required can be acquired in the same manner in order to form a comprehensive Housing Scheme.

6. It is the submission of the learned counsel for the petitioner that even as early as 1977, the Government had issued a letter stating that the lands belonging to Harijans should not be acquired. Further, it is submitted that in G.O.Ms.No.190, dated 23.02.1980, certain lands including the lands in Survey No.98/5, have been brought out side the acquisition proceedings. With the above facts, the learned counsel for the petitioner has drawn the attention of this Court to certain observations made in paragraph 10 of the order, dated 06.03.2013, in W.P.No.15541 of 2003. By referring to the said observations, it is stated that the Housing Board could not take possession of the land in question and this is recorded so in the order. Therefore, it is submitted that till the date of dismissal of the Writ Petition on 06.03.2013, the petitioner had the benefit of the interim order and has not been dispossessed till date in the manner known to law.

7. The second contention is that no compensation has been paid. The learned counsel by relying upon the documents placed in the typed set of papers filed by the Housing Board submitted that though the petitioner filed a claim petition before the City Civil Court in LAOP.No.65 of 1987, it was closed and the amount has not been deposited before the civil court and revenue deposit has been held to be not equivalent to Court deposit and consequently, the petitioner's case would fall within Section 24 (4) of Central Act 30 of 2013. Further, the learned counsel endeavoured to submit that the petitioner's father's brother had challenged the acquisition proceedings in W.P.No.11993 of 1986 and the same was allowed and the acquisition proceedings were quashed and the Housing Board vide communication, dated 25.06.2001, opined that it is not a fit case for filing an appeal. When this contention was raised by the learned counsel, it was pointed out by this Court that the petitioner did not challenge the acquisition proceedings and therefore, the decision in W.P.No.11993 of 1986 is of little avail and cannot in any manner improve the case of the petitioner, since the present Writ petition has been filed drawing inspiration from Section 24(2) of Central Act 30 of 2013. Therefore, the decisions rendered in Writ Petitions filed by land owners questioning the acquisition can have no impact on the present litigation.

8. In support of the contentions raised earlier, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Pune Municipal Corpn., and Anr., vs. Harakehand Misirimal Solanki & Ors., reported in 2014 (1) CTC 755, Sree Balaji Nagar Residential Association vs. State of Tamil Nadu & Ors., reported in 2014 (5) CTC 857 and Magnum Promoters Private Ltd., vs. UOI & Ors., reported in (2015) 3 SCC 327.

9. The learned counsel for the respondent Housing Board elaborately referred to the factual averments as set out in the counter affidavit and submitted that the case as projected by the petitioner is a false and frivolous and an attempt to commit fraud on the respondent Board by attempting to usurp the lands vested with the Board. It is submitted that the petitioner has been all through pleading an inconsistent case and he is not entitled for any relief in the present Writ Petition. It is submitted that the lands in question were taken over and handed over to the Housing Board and transfer had been effected on 30.10.1986 and subsequently, a registered document was executed by the Government on 19.06.1997, registered as document on 27.02.1997. Further, it is submitted that the petitioner and his other family members have entered into a sale agreement with a private party in respect of the property in question and after, which the present litigation has been commenced. Further, it is submitted that though the lands vested with the

Board, there was an encroachment and illegal wall was erected which was removed after the earlier Writ Petition was dismissed by this Court on 06.03.2013. In this regard reference has been made to the report of the Assistant Executive Engineer, TNHB, Besant Nagar Division, dated 02.01.2015. Further, it is submitted that the lands were taken over by the Housing Board and a lay out map was prepared and the same was approved by the CMDA by proceedings dated 27.03.2000 and by referring to the approved plan, it is submitted that the survey number claimed by the petitioner namely Survey No.98/5, is a road and the petitioner by playing fraud, is attempting to block the road, which is meant for public purpose. Further, it is submitted that the observations contained in paragraph 10 of the order dated 06.03.2013, in W.P.No.15545 of 2003, are contrary records and cannot be taken advantage of by the petitioner. Therefore, it is submitted that the entire case as projected by the petitioner is a clear case of fraud and the petitioner is not entitled for any indulgence. Further, it is submitted that in terms of Section 84 of Central Act 30 Of 2013, if any person provides false or misleading information or produces any false document, he is liable for imprisonment and the petitioner is liable to be proceeded against under the said provision of law.

10. I have elaborately heard the learned counsels appearing for the parties and carefully perused the materials placed on record.

11. The law with regard to the effect of Section 24(2) of the Central Act 30 Of 2013, is well settled by a catena of decisions of the Hon'ble Supreme Court and the latest being in the case of The Working Friends Cooperative House Building Society Ltd., vs. The State of Punjab & Ors., reported in 2015 (10) Scale 632, wherein it was pointed out that the leading judgment in respect of Section 24(2) of the Central Act 30 Of 2013 was delivered in the case of Pune Municipal Corpn., and Anr., (supra), and it was concluded in the said decision that the award had been made by the Land Acquisition Collector, more than five years prior to commencement of the Central Act 30 Of 2013 and compensation had not been paid to the land owners/person interested nor deposited in the Court, the acquisition would lapse. It was held that deposit of compensation in Government Treasury is of no avail. Further, the decision in the case of Union of India vs. Shiv Raj reported in [(2014) 6 SCC 564], the decision in the case of Bharat Kumar vs. State of Haryana reported in [(2014) 6 SCC 586], in the case of Bimla Devi vs. State of Haryana reported in [(2014) 6 SCC 583], the decision in the case of Sree Balaji Nagar Residential Association, (supra), and the decision in the case of Karanail Kaur vs. State of Punjab reported in [(2015) 3 SCC 206] were taken into consideration and the law on the issue was reiterated.

12. Thus, it has to be seen whether the petitioner is entitled for protection under Section 24(2) of the Central Act 30 Of 2013, whether the parameters mentioned in the said provision are fulfilled and whether the acquisition proceedings, which had commenced in 1978, is deemed to have been lapsed.

13. The case of the petitioner is that he is in possession of the land solely based on the observations made in W.P.No.15541 of 2003, dated 06.03.2013. As mentioned above, the said Writ Petition was filed to forbear the respondents from acquiring the land of the petitioner. The said Writ Petition was filed in 2003, when the declaration under Section 6 of the Act was issued in 1981 and the Award passed in 1986. Therefore, the prayer sought for in the said Writ Petition was not maintainable. Ultimately the Writ Petition was dismissed. In paragraph 10 of the order, the Court has recorded the submission of the learned Additional Government Pleader appearing for the Tamil Nadu Housing Board that in view of filing of the Writ Petition, the Housing Board could not take possession of the land in question. This observation is sought to be taken advantage of by the petitioner by stating that he is in possession of the land.

14. The contention raised by the petitioner is wholly untenable and utterly perverse. The land acquisition proceedings attained a finality in 1981 and the award was passed in 1986. The petitioner without challenging the acquisition proceedings at any earlier point of time surreptitiously filed a Writ Petition with a prayer not to acquire his lands, when the acquisition had already been completed. Therefore, the earlier Writ Petition filed by the petitioner itself is a clear abuse of process of Court. When the Writ Petition was came up for admission, the only reason why the interim orders were granted is that the lands adjacent to the petitioner's lands which were subject matter of acquisition were quashed by this Court. However, on the said date itself there is nothing on record to show that the petitioner was in actual physical possession of the lands. It is not disputed by the petitioner that the land was a vacant land and continuous to remain so till date. Therefore, when the Writ Petition was heard finally, the submission of the learned counsel for the Housing Board was that the Writ Petition was an interdict to recover possession thereby to mean the petitioner being an encroacher on the strength of the interim order obtained in a Writ Petition filed with a prayer which is not maintainable, the Housing Board could not recover possession. Therefore to say the least, the observations in paragraph 10 of the said order does not in any manner support the case of the petitioner, but rather strengthen the case of the Housing Board.

15. The other relevant factor being that the lands in question were transferred to the Housing Board by transfer of charge certificate dated 23.09.1986, copy of which has been produced in the typed set of papers filed by the Housing Board. That apart, the sketch prepared by the Housing Board which has been annexed to the award also finds place in the typed set of papers. To complete the transaction, a registered deed of transfer has been executed by the Government in favour of the Housing Board on 15.05.1997 and the property in question also finds place in the schedule to the said document. The CMDA vide proceedings dated 27.03.2000, has approved the lay out plan and the copy of plan has been produced before this Court, it is seen that Survey No.98/5, falls in a portion delineated as road. Thus, all these documents clearly go to show that the petitioner is not in possession of the land and the lands have been transferred to the Board during 1986 itself and at best he would have been an encroacher of the land after he was able to obtain an interim order from this Court in 2003 and such encroachment has since been removed. Thus, the first contention raised by the petitioner stands rejected.

16. Further, it is relevant to note that in the above factual scenario the petitioner and his family members had entered into a registered agreement of sale on 22.03.2004, with a third party claiming that they are the sole and absolute owner of the property in question, when admittedly, the property vested with the Housing Board and presumably taking advantage of the interim order in W.P.No.15541 of 2003, which was pending at that point of time. Thus, it is clear that the petitioner has attempted to deal with the property of the Housing Board over which he had no valid right, title or interest as on the said date except for an interim order obtained in a Writ Petition filed by him, which was subsequently dismissed.

17. The second contention being that the award amount has not been deposited in the Civil Court. This plea is absolutely fallacious. It is evident from the copy of the judgment in LAOP.No.65 of 1987, dated 09.08.1995, on the file of the City Civil Court, Chennai, wherein a clear direction is issued by the Court regarding the manner of deposit. Further, from the communication of the Special Tahsildar, Land Acquisition to the 10th City Civil Court, dated 31.03.1987, reveals that the compensation amount has been deposited before the Civil Court and Demand Draft has been forwarded to the Court. Thus, it is clear that the amount has been deposited in City Civil Court and it is not a revenue deposit and therefore, the second contention raised by the petitioner also has to necessarily fail. In the light of the above factual position, the benefit of the decisions referred to by the learned counsel for the petitioner are of little avail as the petitioner has miserably failed to establish the factual parameters required to be fulfilled to be

entitled to the benefit of Section 24(2) of the Central Act 30 of 2013.

18. In the light of the above discussion, the petitioner has not made out any grounds to grant the relief sought for and the Writ Petition fails and is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

pbn

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Govt.,
The Government of Tamil Nadu,
Housing and Urban Development Dept.,
Fort St., George,
Chennai - 600 009.
- 2.The Special Thasildar (Land Acquisition),
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- 4.The Executive Engineer,
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Chennai - 600 041.

+ 1 CC TO THE GOVT.PLEADER, SR 66926.

+ 1 CC TO Mr.M.Dhandapandi, ADVOCATE SR 66707.

+ 1 CC TO Mr.B.Vivekavanan, ADVOCATE SR 66882.

KJI/CO
KR/28/12

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